

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID E. EDWARDS,

Plaintiff,

v.

M. KUERSTEN,

Defendant.

No. 2:21-cv-00259-JAM-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in this action brought under 42 U.S.C. § 1983. Defendant argues that the case should be dismissed because, among other things, the complaint fails to state a claim. ECF No. 33. For the reasons that follow, the motion should be granted as to plaintiff's claim for injunctive relief and otherwise denied.

**I. Plaintiff's Allegations**

In his amended complaint, plaintiff alleges that he suffers from REM sleep disorder. ECF No. 11 at 4. The condition causes individuals who suffer from it to "act out their dreams while sleeping." *Id.* "Symptoms include kicking, punching, arm flailing, or jumping from the bed." *Id.* Because plaintiff experienced about six episodes of REM sleep disorder each year, his doctor at CSP-Solano told plaintiff that he would advocate for plaintiff to be assigned a "lower bunk chrono" (a document that would direct prison staff not to assign plaintiff to a top bunk). *Id.*

Because of his fear that he would fall out of bed and be injured during an episode of the disorder, plaintiff sought a permanent lower bunk chrono. *Id.* at 12. The institution's Reasonable

Accommodations Panel (RAP) denied the request. *Id.* at 15. Plaintiff appealed that denial, but defendant (the chief medical executive of the prison) upheld it. *Id.* at 15-17. In doing so, defendant referenced and quoted plaintiff's medical records, stating that they indicated that plaintiff did not need a lower bunk chrono at this time because his REM sleep disorder was asymptomatic. *Id.* at 15-16.

Plaintiff claims that defendant misrepresented his medical records. *Id.* at 4. "Exhibit B is dated April 22, 2020 and documents a REM Sleep Disorder episode, and yet only five months later on September 1, 2020 Defendant denies any recent documentation." *Id.* Exhibit B consists of plaintiff's April 22, 2020 "Reasonable Accommodation Request" in which he wrote, "Last night I fell halfway out of bed in my sleep, injuring my neck and shoulder. This is the fifth episode I have had in the last 12 months." *Id.* at 12.

## II. The Motion to Dismiss

### A. Legal Standards Governing Motions to Dismiss

A complaint may be dismissed for "failure to state a claim upon which relief may be granted." Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss for failure to state a claim, a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has "facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). The plausibility standard is not akin to a "probability requirement," but it requires more than a sheer possibility that a defendant has acted unlawfully. *Iqbal*, 556 U.S. at 678.

Dismissal under Rule 12(b)(6) may be based on either: (1) lack of a cognizable legal theory, or (2) insufficient facts under a cognizable legal theory. *Chubb Custom Ins. Co.*, 710 F.3d at 956. Dismissal also is appropriate if the complaint alleges a fact that necessarily defeats the claim. *Franklin v. Murphy*, 745 F.2d 1221, 1228-1229 (9th Cir. 1984). In resolving a Rule 12(b)(6) motion to dismiss, the court must construe the complaint in the light most favorable to

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1 the plaintiff and accept all well-pleaded factual allegations as true (and any reasonable inference  
2 supported by the facts). *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003).

3 For purposes of dismissal under Rule 12(b)(6), the court generally considers only  
4 allegations contained in the pleadings, exhibits attached to the complaint, and matters properly  
5 subject to judicial notice, and construes all well-pleaded material factual allegations in the light  
6 most favorable to the nonmoving party. *Chubb Custom Ins. Co. v. Space Sys./Loral, Inc.*, 710  
7 F.3d 946, 956 (9th Cir. 2013); *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012).

8 B. *Analysis*

9 Defendant first argues that the court should consider plaintiff's grievance challenging the  
10 denial of the bottom bunk chrono because it is incorporated by reference into the complaint.  
11 According to defendants, the grievance shows that defendant did not deny plaintiff the chrono,  
12 but rather the RAP denied it. Even accepting defendant's premise that the grievance is  
13 incorporated by reference into the complaint, the court must reject defendant's consequent  
14 argument that defendant, in his role reviewing plaintiff's grievance of the RAP's decision, could  
15 not be held liable for any alleged deliberate indifference. "[A]ppellate examiners have the ability  
16 to end the ongoing constitutional violation alleged by the prisoner in the grievance; by not doing  
17 so the appellate reviewer may act in deliberate indifference to the continuation of the  
18 constitutional violation." *Estrada v. Macias*, No. 1:15-cv-01292-AWI-SAB (PC), 2017 U.S.  
19 Dist. LEXIS 46942, at \*6 (E.D. Cal. Mar. 28, 2017) (citing *Jett v. Penner*, 439 F.3d 1091, 1098  
20 (9th Cir. 2006) and *Gonzalez v. Ahmed*, 67 F. Supp. 3d 1145, 1155-56 (N.D. Cal. 2014)).

21 Defendant next argues that plaintiff's amended complaint does not show that he  
22 purposefully disregarded an excessive risk of harm to plaintiff by failing to reverse the RAP  
23 decision; rather, according to defendant, the complaint merely alleges plaintiff's disagreement  
24 with defendant's medical decision. To succeed on an Eighth Amendment claim predicated on  
25 allegedly deficient medical care, a plaintiff must establish that: (1) he had a serious medical need  
26 and (2) the defendant's response to that need was deliberately indifferent. *Jett v. Penner*, 439  
27 F.3d 1091, 1096 (9th Cir. 2006); *see also Estelle v. Gamble*, 429 U.S. 97, 106 (1976). A serious  
28 medical need exists if the failure to treat the condition could result in further significant injury or

1 the unnecessary and wanton infliction of pain. *Jett*, 439 F.3d at 1096. A deliberately indifferent  
2 response may be shown by the denial, delay or intentional interference with medical treatment or  
3 by the way in which medical care was provided. *Hutchinson v. United States*, 838 F.2d 390, 394  
4 (9th Cir. 1988). To act with deliberate indifference, a prison official must both be aware of facts  
5 from which the inference could be drawn that a substantial risk of serious harm exists, and he  
6 must also draw the inference. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

7 The amended complaint sufficiently alleges that, due to plaintiff's condition, placement in  
8 an upper bunk presented an excessive risk of harm to plaintiff: "Plaintiff suffers from REM Sleep  
9 Disorder, a condition that is documented and known to cause Plaintiff to fall out of bed while  
10 sleeping. For this reason, sleeping on a top bunk would be an excessive risk of harm to Plaintiff,  
11 as a reasonable medical officer would know." ECF No. 11 at 4. According to plaintiff,  
12 "Defendant's action of denying Plaintiff the reasonable accommodation of a lower bunk only  
13 chrono . . . [was] not a legitimate medical judgment." *Id.* at 5. These allegations, although  
14 disputed, suffice at this stage to state a deliberate indifference claim against defendant.

15 The court must reject defendant's argument that the complaint should be dismissed  
16 because the exhibits attached to plaintiff's complaint do not substantiate his claims. The fact that  
17 plaintiff's "documentation" of a recent episode of REM sleep disorder consisted of his own  
18 allegation in a grievance does not contradict his allegations of the complaint; there may well be  
19 documentation from a medical source of such an episode, or plaintiff may proceed on the theory  
20 that his self-report in the grievance gave defendant knowledge of the risk of harm that an upper  
21 bunk placement posed to plaintiff.

22 The court must also reject defendant's request for qualified immunity at this stage. When  
23 considering a claim for qualified immunity at the motion-to-dismiss stage, the court must ask  
24 "whether the complaint alleges sufficient facts, taken as true, to support the claim that the  
25 officials' conduct violated clearly established constitutional rights of which a reasonable officer  
26 would be aware in light of the specific context of the case." *Keates v. Koile*, 883 F.3d 1228, 1235  
27 (9th Cir. 2018). As discussed above, the facts of the complaint are sufficient to state a claim for  
28 deliberate indifference to medical needs. The right to be free from deliberate indifference to

1 medical needs is, broadly stated, very well established. But, more importantly, the specific notion  
2 that assigning a prisoner to an upper bunk when her medical needs indicate that such an  
3 assignment presents an excessive risk of harm to the prisoner may constitute deliberate  
4 indifference is also so well established that a May 16, 2022 search of the LEXIS database with  
5 the parameters [(“bottom bunk” or “lower bunk”) and “deliberate indifference”] resulted in 1,275  
6 cases in the Ninth Circuit alone. *E.g.*, *Doreh v. Rodriguez*, 723 Fed. Appx. 530 (9th Cir. 2018);  
7 *Barnard v. Lewis*, 1994 U.S. App. LEXIS 6443 (9th Cir. 1994). Thus, a reasonable officer should  
8 be aware that a refusal to order lower bunk placement for an inmate whose medical needs indicate  
9 the necessity of such placement could violate the Constitution.

10 Defendant next argues that the court must dismiss plaintiff’s claim against him in his  
11 official capacity for damages. But plaintiff specifically asserts the damages claim against  
12 defendant “personally.” ECF No. 11 at 3. There is no official capacity claim for damages for the  
13 court to dismiss.

14 Lastly, defendant argues that plaintiff’s claim for an injunction ordering defendant to give  
15 plaintiff a lower bunk chrono for the duration of his incarceration must be dismissed as moot  
16 because plaintiff has been transferred to another prison. Plaintiff does not dispute that he has  
17 been transferred from CSP-Solano; his address of record with the court indicates that he is  
18 currently housed at the Correctional Training Facility in Soledad, California. The transfer of  
19 plaintiff to a new prison without any allegation that he has a reasonable expectation of being  
20 returned to CSP-Solano, where defendant would again have the power to provide or deny a lower  
21 bunk chrono, renders his injunctive relief claim moot. *Darring v. Kincheloe*, 783 F.2d 874, 876  
22 (9th Cir. 1986). Accordingly, the court must dismiss the claim for injunctive relief with leave to  
23 amend to allow plaintiff the opportunity to allege that he has a reasonable expectation of being  
24 returned to CSP-Solano.

### 25 **III. Recommendation**

26 For the reasons provided above, it is hereby RECOMMENDED that defendant’s February  
27 7, 2022 motion to dismiss (ECF No. 33) be granted as to plaintiff’s claim for injunctive relief and  
28 otherwise denied, and that plaintiff be given leave to file a second amended complaint (if he so

1 chooses) to attempt to allege facts showing that his injunctive relief claim is not rendered moot by  
2 his transfer out of CSP-Solano.

3 The undersigned further recommends that plaintiff's March 21, 2022, request that the  
4 court enter default judgment against defendant (ECF No. 36) be denied. Plaintiff claims that the  
5 motion to dismiss was untimely filed, but it was filed within the time allowed by the court's  
6 December 27, 2021 order (ECF No. 33).

7 These findings and recommendations are submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
9 after being served with these findings and recommendations, any party may file written  
10 objections with the court and serve a copy on all parties. Such a document should be captioned  
11 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
12 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
13 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

14 Dated: June 13, 2022.

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16 EDMUND F. BRENNAN  
17 UNITED STATES MAGISTRATE JUDGE  
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